

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 JUAN COLLADO et al., *individually and on behalf of*
all others similarly situated,

Plaintiffs,

-v-

ADOLFO MEAT MARKET CORP. et al.,

Defendants.
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22-CV-9366 (JMF)

MEMORANDUM
OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

On February 11, 2023, Defendants filed a motion to dismiss the complaint under Rule 12(b) of the Federal Rules of Civil Procedure.¹ ECF No. 29. Defendants’ motion is frivolous, if not sanctionable. It is a fundamental principle — familiar to most first-year law students — that, in adjudicating a motion to dismiss, a court must assume the truth of all well-pleaded allegations in the complaint and may not consider extrinsic evidence. *See, e.g., Spirit Realty Cap., Inc. v. Westport Ins. Corp.*, 568 F. Supp. 3d 470, 472 (S.D.N.Y. 2021) (citing cases). Yet Defendants’ arguments for dismissal of Plaintiffs’ wage-and-hour claims are based entirely on affidavits that merely dispute the truth of the allegations in the Complaint. *See* ECF No. 32 (“Defs.’ Mem.”), at 4-5, 7-9; *see also* ECF Nos. 30-31.² Defendants’ only other argument is that Plaintiffs’ claim under 26 U.S.C. § 7434(a) should be dismissed because the law requires that “[a]ny person bringing an action under” that provision “provide a copy of the complaint to the Internal

¹ Defendants’ deadline to file a reply was March 13, 2023, *see* ECF No. 34, but they did not file a reply.


² Unhelpfully, Defendants do not include page numbers in their memorandum of law. Accordingly, page citations to their memorandum of law are to the page numbers automatically generated by the Court’s Electronic Case Filing system.

Revenue Service upon the filing of such complaint with the court.” 26 U.S.C. § 7434(d); *see* Defs.’ Mem. 9. But Defendants “do[] not cite — and this Court is not aware of — any authority in support of their argument that a Section 7434 claim must be dismissed if a plaintiff fails to provide the [Internal Revenue Service] a copy of each version of a complaint when it was filed with the court.” *Schmelzer v. Animal Wellness Ctr. of Monee, LLC*, No. 18-CV-1253, 2022 WL 3026911, at *10 (N.D. Ill. Aug. 1, 2022). More significantly, Plaintiffs *did* provide the Internal Revenue Service with a copy of their Complaint — and filed proof that they did so months before Defendants filed their motion. *See* ECF No. 12.

For the foregoing reasons, Defendants’ motion is DENIED. Defendants shall file an answer **within fourteen days** of the date of this Memorandum Opinion and Order. *See* Fed. R. Civ. P. 12(a)(4)(A). The parties are reminded that they are required to contact the assigned Magistrate Judge **within one week of the answer being** filed to schedule a settlement conference. *See* ECF No. 8. In addition, the initial pretrial conference, previously adjourned *sine die*, is hereby RESCHEDULED for **April 19, 2023, at 9:00 a.m.** The parties should refer to the Court’s November 2, 2022 Order, ECF No. 7, for instructions regarding the conference, including call-in information and the required contents of the parties’ joint letter and proposed case management plan. The Clerk of Court is directed to terminate ECF No. 29.

SO ORDERED.

Dated: March 15, 2023
New York, New York



JESSE M. FURMAN
United States District Judge